

Via Facsimile: (703) 872-9306

**PATENT
9D-HR-19761**

Remarks

The Office Action mailed February 3, 2004 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1, 3-18, and 20-21 are now pending in this application. Claims 1, 3-11 stand rejected. Claims 12-18 and 20-21 are allowed. Claims 2 and 19 have been canceled.

The rejection of Claims 1 and 3-7, and 9-11 under 35 U.S.C. § 102(b) as being anticipated by Falk (U.S. Pat. No. 4,735,470) is respectfully traversed.

Falk describes a combination slidable storage assembly (30) disposed beneath at least one shelf assembly (20). Each shelf assembly includes a pair of side brackets (22) spaced apart by a pair of transverse bars (36). Each bracket supports a runner (42) that extends substantially the full length of the bracket, formed in the runner is a groove (44) that extends substantially the full length of the runner. Notably, the runner does not include a clearance portion, wherein the clearance portion includes a horizontal aperture.

Claim 1 recites "a system for limiting outward movement of a slide-out shelf, said structure comprising a plurality of side supports configured to support the shelf, each said side support comprising a ledge comprising a clearance portion, the clearance portion comprising a horizontal aperture...a plurality of support members configured to rigidly connect said side supports and contact at least a portion of the shelf thereby blocking forward movement of the shelf...a plurality of gussets extending inwardly from each of said side supports...and a gusset tab extending upwardly from each of said gussets and configured to contact a portion of the shelf thereby blocking further forward movement of the shelf."

Falk does not describe or suggest a system for limiting outward movement of a slide-out shelf, wherein the structure includes a plurality of side supports configured to support the shelf, wherein each of the side supports include a ledge including a clearance portion, wherein the clearance portion includes a horizontal aperture, a plurality of support members configured to rigidly connect the side supports and contact at least a portion of the shelf thereby blocking forward movement of the shelf, a plurality of gussets extending inwardly from each of the side

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supports, and a gusset tab extending upwardly from each of the gussets and configured to contact a portion of the shelf thereby blocking further forward movement of the shelf. Specifically, Falk does not describe or suggest a plurality of side supports including a ledge that includes a clearance portion, wherein the clearance portion includes a horizontal aperture. Rather Falk describes a clearance portion formed by an upper portion of a groove that includes a vertical aperture. For the reasons set forth above, Claim 1 is submitted to be patentable over Falk.

Claims 3-7 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 3-7 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 3-7 likewise are patentable over Falk.

Claim 9 recites "a method for assembling a shelf assembly, wherein the method comprises providing a shelf including at least one forward tab and at least one rear tab extending outwardly from the shelf...providing at least one side support configured to support the shelf, the side supports include at least one side support clearance sized to receive the forward tab, at least one gusset extending inwardly from each of the side supports, wherein the at least one gusset includes a gusset tab extending upwardly, and at least one support member configured to rigidly connect the side supports and configured to contact the forward tab when the shelf is in a first extended position...and slidably coupling the shelf to the side supports."

Falk does not describe or suggest a method for assembling a shelf assembly, wherein the method includes providing a shelf including at least one forward tab and at least one rear tab extending outwardly from the shelf, providing at least one side support configured to support the shelf, the side supports include at least one side support clearance sized to receive the forward tab, at least one gusset extending inwardly from each of the side supports, wherein the at least one gusset includes a gusset tab extending upwardly, and at least one support member configured to rigidly connect the side supports and configured to contact the forward tab when the shelf is in a first extended position, and slidably coupling the shelf to the side supports. Specifically, Falk does not describe or suggest providing at least one support member configured to rigidly connect the side supports and configured to contact the forward tab when the shelf is in a first extended position. Rather Falk describes a pair transverse members configured to support a plurality of

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brackets, but is not configured to contact the forward tab when the shelf is in a first extended position. For the reasons set forth above, Claim 9 is submitted to be patentable over Falk.

Claims 10-11 depend, directly or indirectly, from independent Claim 9. When the recitations of Claims 10-11 are considered in combination with the recitations of Claim 9, Applicants submit that dependent Claims 10-11 likewise are patentable over Falk.

For the reasons set forth above, Applicants respectfully request that the Section 102 rejection of Claims 1 and 3-7, and 9-11 be withdrawn.

The rejection of Claim 8 under 35 U.S.C. § 103 as being unpatentable over Falk (U.S. Pat. No. 4,735,470) in view of Kolbe et al. ("Kolbe") (U.S. Pat. No. 5,340,209) is respectfully traversed.

Falk is described above. Kolbe describes a slide assembly (20) that includes a shelf structure (27) mounted on a pair of supports (23 and 24) in a refrigerated compartment (14). The shelf structure includes a shelf plate (33) that is encapsulated by a rim (34). A unitary latch member (44) interacts with the support (23) and the rim to facilitate shelf operation. During extension of the shelf, the latch engages a slot (66) in flange (40) of the rim. Notably, Kolbe does not describe a plurality of side supports including a ledge that includes a clearance portion, wherein the clearance portion includes a horizontal aperture.

Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been an obvious to one of ordinary skill in the art to modify Falk according to the teachings of Kolbe. More specifically, as is well established, obviousness cannot be established by combining the teachings of the cited art to produce the claimed invention, absent some teaching, suggestion, or incentive supporting the combination. Neither Falk nor Kolbe, considered alone or in combination, describes or suggests the claimed combination. Furthermore, in contrast to the assertion within the Office Action, Applicants respectfully submit that it would not be obvious to one skilled in the art to combine Falk with Kolbe because there is no motivation to combine the references suggested in the art. Rather, the Examiner has not pointed to any prior art that teaches or suggests to combine the disclosures, other than

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Applicants' own teaching. Only the conclusory statement that "[i]t would have been obvious to one of ordinary skill in the art at the time the present invention to have utilized side supports shaped liked the supports taught by Kolbe et al." suggests combining the disclosures.

More specifically, it is respectfully submitted that a prima facie case of obviousness has not been established. As explained by the Federal Circuit, "to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant." In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Moreover, the Federal Circuit has determined that:

[I]t is impermissible to use the claimed invention as an instruction manual or "template" to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."

In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). Further, under Section 103, "it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art." In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicants' disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants' disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown.

The present Section 103 rejection is based on a combination of teachings selected in an attempt to arrive at the claimed invention. Specifically, Falk is cited for a bracket support including a runner with a groove defined therein, and Kolbe is cited for a system for limiting outward movement of a slide-out shelf. Since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to

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deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claim 8 be withdrawn.

In addition, in the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown. More specifically, neither Falk nor Kolbe, considered alone or in combination, describe or suggest a plurality of side supports including a ledge that includes a clearance portion, wherein the clearance portion includes a horizontal aperture.

If art "teaches away" from a claimed invention, such a teaching supports the nonobviousness of the invention. U.S. v. Adams, 148 USPQ 479 (1966); Gillette Co. v. S.C. Johnson & Son, Inc., 16 USPQ2d 1923, 1927 (Fed. Cir. 1990). In light of this standard, it is respectfully submitted that the cited art, as a whole, is not suggestive of the presently claimed invention. More specifically, Applicants respectfully submit that Kolbe teaches away from Falk, and as such, there is no suggestion or motivation to combine Falk with Kolbe.

Further, and to the extent understood, no combination of Falk and Kolbe, describes or suggests the claimed combination, and as such, the presently pending claims are patentably distinguishable from the cited combination. Specifically, Claim 1 recites "a system for limiting outward movement of a slide-out shelf, said structure comprising a plurality of side supports configured to support the shelf, each said side support comprising a ledge comprising a clearance portion, the clearance portion comprising a horizontal aperture...a plurality of support members configured to rigidly connect said side supports and contact at least a portion of the shelf thereby blocking forward movement of the shelf...a plurality of gussets extending inwardly from each of said side supports...and a gusset tab extending upwardly from each of said gussets and configured to contact a portion of the shelf thereby blocking further forward movement of the shelf."

Neither Falk nor Kolbe, alone or in combination, describe or suggest a system for limiting outward movement of a slide-out shelf, wherein the structure includes a plurality of side supports configured to support the shelf, wherein each of the side supports include a ledge including a clearance portion, the clearance portion comprising a horizontal aperture, a plurality of support members configured to rigidly connect the side supports and contact at least a portion

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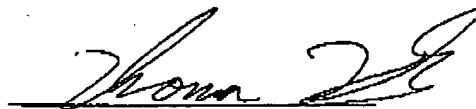
of the shelf thereby blocking forward movement of the shelf, a plurality of gussets extending inwardly from each of the side supports, and a gusset tab extending upwardly from each of the gussets and configured to contact a portion of the shelf thereby blocking further forward movement of the shelf. Specifically, neither Falk nor and Kolbe, alone or in combination, describe or suggest a plurality of side supports including a ledge that includes a clearance portion, wherein the clearance portion includes a horizontal aperture. Accordingly, for at least the reasons set forth above, Claim 1 is submitted to be patentable over Falk in view of Kolbe.

Claim 8 depends indirectly from independent Claim 1. When the recitations of Claim 8 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claim 8 is likewise patentable over Falk in view of Kolbe.

For the reasons set forth above, Applicants respectfully request that the Section 103 rejection of Claim 8 be withdrawn.

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance. Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



Thomas M. Fisher
Registration No. 47,564
ARMSTRONG TEASDALE LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102-2740
(314) 621-5070